

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 371 of 1999
with
CIVIL APPLICATION No 7479 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No.

LIFE STYLE ROYALTY PVT.LTD.

Versus

ARVINDBHAI AMRUTBHAI PATEL

Appearance:

MR AJ PATEL for Appellant

MR TS NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 29/07/1999

ORAL JUDGEMENT

ADMITTED. Learned advocate Mr.T.S.Nanavati
waives service of notice of admission on behalf of the
respondents. With the consent of the learned advocates
appearing for both the parties, the matter is taken up
for final hearing.

2. In this Appeal from Order, the appellant herein has brought in challenge the order dated 5.7.1999 recorded below Ex.5 in Special Civil Suit No.72 of 1999 by the learned 8th Joint Civil Judge (S.D.) of Kheda at Nadiad whereby he has rejected the application at Ex.5 filed by the plaintiff wherein relief of injunction was sought for against defendants with respect to the suit property bearing Blocks Nos.80 and 86 situated at village Kanera, taluka Matar, district Kheda.

3. The present appellant is the plaintiff and the respondents are the defendants. For the sake of brevity and convenience, the parties are hereinafter referred as 'plaintiff' and 'defendants'.

4. The plaintiff filed a suit for specific performance of contract as per the agreement to sell which was executed by the defendants in favour of the plaintiff. Along with the suit, application Ex.5 was also submitted seeking the relief of injunction restraining the defendants from disturbing qua his possession, transfer, alienation etc. of the suit property.

5. The application Ex.5 was contested by the defendants by filing written objections. After hearing the learned advocates appearing for the parties, the learned trial Judge upon assessment and evaluation of the agreement at Mark 3/1 came to the conclusion that there was no prima facie case in favour of the plaintiff and, therefore, he refused to grant injunction by rejecting the application.

6. At the time of hearing of this appeal, learned advocate Mr.T.S.Nanavati appearing for the defendants states that, so far as the property bearing Block No.80 is concerned, defendant No.2 has purchased it from defendant No.1 by a registered sale deed and by virtue of the said sale deed, defendant No.2 is in possession of that property. Therefore, the said property at present is in possession of defendant No.1. He makes a statement upon instructions received from his clients, who are present in the court, that till pendency of the suit, the defendants shall not transfer or alienate both the properties by creating any interest in third party.

7. Learned advocate Mr.A.J.Patel for the plaintiff tried to convince that the plaintiff is still in possession of all the suit properties by virtue of the agreement to sell executed by defendant No.1 in favour of

him.

8. In view of the aforesaid rival contentions, I am of the opinion that the plaintiff claimed the suit property and possession thereon by virtue of the agreement to sell, whereas defendant No.2 claimed the property bearing Block No.80 and possession thereon by virtue of the sale deed. Therefore, without expressing any opinion about merits of the case and rival contentions and on the basis of the statement made by learned advocate Mr.T.S.Nanavati, this appeal can be disposed of by allowing it in part so that equity can be tilted in favour of both the parties.

9. Resultantly, the Appeal from Order succeeds in part and accordingly it is allowed with no order as to costs. In view of the statement made by learned advocate Mr.T.S.Nanavati, the defendants are hereby restrained from transferring or alienating the suit property till disposal of the suit. Civil Application is, accordingly, disposed of.

10. In the peculiar facts and circumstances of the case, the learned trial judge, before whom Special Civil Suit No.72 of 1999 is pending for final disposal, shall give expeditious hearing to the same and shall try to dispose of it as early as possible, preferably on or before 30th April, 2000 by giving opportunity of leading evidence to both the parties, and decide the same in accordance with law uninfluenced by the statement made by learned advocate Mr.T.S.Nanavati for the respondents and the order recorded in this Appeal from Order.

(KMG Thilake)

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